



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MR. HENRY PARKER, JR.

### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Henry Parker, Jr. for the purpose of resolving certain violations of environmental law and regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "VA Code" means the Code of Virginia (1950), as amended.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Property" means property that consisted of a retail store and gasoline station, formerly known as Starke's Grocery, now owned by Mr. Parker, located at 17607 James River Drive, Disputanta, Virginia.
8. "Mr. Parker" means Mr. Henry Parker, Jr., owner of the property located at 17607 James River Drive, Disputanta, Virginia.
9. "Notification form" means Form 7530 used by the DEQ to register and track USTs for proper operation, closure and ownership purposes. See 9 VAC 25-580-70.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "UST" means underground storage tank as further defined in 9 VAC 25-580-10 and Virginia Code § 62.1-44.34:8.
12. "RCA" means Request for Corrective Action.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mr. Parker is the owner of the Property, formerly called Starke's Grocery, located at 17607 James River Drive, in Disputanta, Virginia and is an UST owner and/or operator within the meaning of VA Code § 62.1-44.34:8.
2. When Mr. Parker bought the Property in 2004, there were five (5) underground storage tanks (USTs) used to store petroleum for retail sale. The USTs are identified as follows:

Tank No.	Capacity	Content
1	10,000	Gasoline- Reg.
2	5,000	Gasoline - Plus
3	5,000	Gasoline - Super
4	3,000	Diesel
5	3,000	Kerosene

3. Because petroleum is a "regulated substance" as defined by VA. Code 62.1-44.34:8 and 9 VAC 25-580-10, the USTs at the Property are regulated under 9 VAC 25-580-10, *et seq.*
4. On March 16, 2005, DEQ staff inspected the Property. At the time of the inspection, Mr. Parker, was in the process of removing 3 (the 10,000 gallon gasoline tank and the compartmentalized diesel and kerosene tank) USTs from the ground.

5. In April 2005, DEQ sent Mr. Parker a Request for Corrective Action (RCA) as a result of the findings of the March 16, 2005 inspection. The RCA requested that Mr. Parker submit an amended UST notification form and provide DEQ with the required closure documents for the removed USTs.
6. On July 25, 2005, a Warning Letter (WL) was sent to Mr. Parker for failure to respond to the RCA. The WL was issued for the following:
  - Failure to submit an amended UST notification form in apparent violation of Regulation 9 VAC 25-580-70.
  - Failure to provide a copy of the building permit obtained from the County for the removal of the USTs in apparent violation of Regulation 9 VAC 25-580-320.
  - Failure to submit the results of a site assessment of the excavation zone of the closed USTs in apparent violation of Regulation 9 VAC 25-580-330.
7. On August 30, 2005, DEQ received the requested site testing information from the excavation zone of the closed USTs, which partially addressed the failure to submit the required closure documents.
8. On September 28, 2005, DEQ staff performed a follow-up inspection of the site. The inspection verified that the 10,000 gallon gasoline UST and the compartmentalized diesel/kerosene USTs had been removed. At this inspection, Mr. Parker did not provide a disposal manifest for the removed USTs and stated that he did not recall their disposal location. The remaining USTs (compartmentalized for Plus and Super gasoline) at the site were improperly closed – the out-of-use USTs had not been removed from the ground nor been filled with an inert material as regulation requires. On this same date, DEQ received through the mail, a copy of the County Building Permit for the removal in March 2005 of the 3 USTs (the 10,000 gallon gasoline tank and 3000 gallon diesel and 3,000 gallon kerosene tanks).

Tanks	Capacity	Contents	Status
1	10,000	Gasoline – Reg.	Removed
2	5,000	Gasoline – Plus	In the ground
3	5,000	Gasoline – Super	In the ground
4	3,000	Diesel	Removed
5	3,000	Kerosene	Removed

9. On December 6, 2005, DEQ issued a Notice of Violation (NOV) to Mr. Parker for the following:
  - Improper closure of the out-of-use 10,000 gallon (Plus and Super compartmentalized) USTs that remained in the ground in apparent violation of Regulation 9 VAC 25-580-320(3).

- Failure to provide a copy of a permit from the County building official for the permanent closure of the USTs in apparent violation of Regulation 9 VAC 25-580-320
  - Failure to submit a UST notification form amending the status of the USTs currently registered as being in use at the facility in apparent violation of Regulations 9 VAC 25-580-320(1) and 9 VAC 25-580-70.
10. In response to the NOV, Mr. Parker met with DEQ on January 11, 2006. At that meeting, Mr. Parker submitted a copy of the building permit for the 2 USTs removed in December 2005; information on the location of all of the disposed USTs; and completed the amended notification form (7530); and agreed to provide a copy from F.W. Baird verifying that the tanks had been properly cleaned – the sludge would be removed and properly disposed.

Tanks	Capacity	Contents	Status
1	10,000	Gasoline -- Reg.	Removed
2	5,000	Gasoline - Plus	Removed
3	5,000	Gasoline - Super	Removed
4	3,000	Diesel	Removed
5	3,000	Kerosene	Removed

11. On January 31, 2006, Mr. Parker submitted to DEQ documents from F.W. Baird confirming that the contents from all of the USTs had been removed and the tanks properly cleaned and the sludge properly disposed.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Parker, and Mr. Parker voluntarily agrees, to pay a civil charge of \$2,450 in accordance with Appendix A of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Mr. Parker. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and delivered to:

Receipts Control  
 Department of Environmental Quality  
 Post Office Box 10150  
 Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Parker, for good cause shown by Mr. Parker, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on December 6, 2005 as listed above in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Parker admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Parker consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Parker declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Parker to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Parker shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Parker shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Parker shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Mr. Parker. Notwithstanding the foregoing, Mr. Parker agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. Mr. Parker petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Parker.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Parker from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By the signature below, Mr. Parker voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 2, 2006.

  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Mr. Parker voluntarily agrees to the issuance of this Order.

By: Henry D. Parker  
Date: 5-2-06

Commonwealth of Virginia

City/County of Prince George

The foregoing document was signed and acknowledged before me this 2<sup>nd</sup> day of

May, 2006, by Henry D. Parker, who is  
(name)

owner of the Property.

Larrie Marie Perryman  
Notary Public

My commission expires: January 31, 2009

## APPENDIX A

Mr. Parker shall make the following payments in settlement of the violations cited in the Order as scheduled:

1. The first payment of **\$500.00** shall be due within 30 days of the effective day of the Order.
2. **\$500.00** shall be due by .....**August 4, 2006**
3. **\$500.00** shall be due by .....**September 4, 2006**
4. **\$500.00** shall be due by .....**October 4, 2006**
5. **\$450.00** shall be due by .....**November 3, 2006**